

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Shirley K. Warren, Joseph W. Warren,

Plaintiffs,

Civil No. 03-5593 (RHK/AJB)

vs.

ORDER

Bradley J. Erickson, MD,

Defendant.

Before the Court is Defendant's Motion for Summary Judgment. At the August 24th hearing, it was disclosed that neither party had made a demand for a trial by jury and, accordingly, the case would be submitted to the Court for resolution. Under these circumstances, the Court is of the opinion that the matter should proceed to trial, subject to the previously interposed objections to the proposed testimony of Plaintiffs' expert witnesses and the right of Defendant to move for judgment as a matter of law in accordance with Federal Rules of Civil Procedure 52(c). Under this procedure, the Court will hear the actual testimony of Plaintiffs' expert witnesses rather than having to rule on its admissibility based upon their written opinions, affidavits and arguments of counsel. The Court fully understands the Defendant's position with respect to this proposed testimony and this Order is without prejudice to the maintenance of that position at trial.

Accordingly, and upon all the files, records and proceedings herein, **IT IS ORDERED** that Defendant's Motion for Summary Judgment (Doc. No. 47) is **DENIED WITHOUT PREJUDICE**, and the matter will proceed to trial by the Court in November

2005.

Dated: September 1, 2005

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge